

**ANN EE SIONG v.
KIM TAW ELECTRIC SAWMILL CO. (PTE.) LTD.**

[O.C.J. (Sinnathuray J.) October 2, 1979]

[Singapore — Suit No. 2875 of 1976]

Tort — Negligence — Duty to provide safe system of work — Lorry parked lop-sided — Logs rolling off lorry injuring plaintiff — Res ipsa loquitur.

Employment — Employers' duty to provide safe system of work — Injury caused by logs rolling off parked lorry — Res ipsa loquitur.

The plaintiff in this case was injured by timber logs rolling off a lorry parked at the unloading bay at the defendant company's sawmill. The lorry was parked with one side of it on the road and the other side of it on the verge. It was slightly lopsided.

Held: (1) the principle of *res ipsa loquitur* applied in this case; a *prima facie* case of negligence was established;

(2) the defendant company had a duty to provide a safe system of work. There had been a breach of that duty and that resulted in the accident.

CIVIL SUIT.

Chiam See Tong for the plaintiff.

Joe Chellam for the defendant.

Sinnathuray J. (delivering oral judgment): This case was part-heard on September 5. At that hearing, the plaintiff's case had concluded. The evidence for the plaintiff was that on the material day, August 25, 1973, as a result of timber logs rolling off a lorry parked at the unloading bay at the defendant company's sawmill, he was injured. He said that the lorry had arrived at the unloading bay and had been left stationary there for about an hour. The chains around the timber logs had been unfastened but the wedges that held the logs were left intact. A finding of fact that I make is that the lorry was parked with one side of the lorry on the road and the other side of it on the verge. It would mean the lorry was slightly lopsided. The evidence is that it is the usual way lorries are parked at the sawmill for the unloading of timber logs as the unloading bay is adjacent to the verge of the road. The issue is whether the defendant company had provided a safe system of work. In my judgment, to allow lorries to be parked as I have described is not providing a safe system of work.

That day, when the plaintiff went to the lorry (he went with the lorry driver), and when he was close to the lorry, the logs rolled off the lorry. As I said in the course of the submission that piece of evidence brings into operation the principle of *res ipsa loquitur*. A *prima facie* case of negligence was established, and the defence was heard.

Today I have heard two witnesses for the defence. I do not propose to summarise their evidence. They have given an explanation as to how the accident occurred. They put the blame altogether on the plaintiff. Their evidence is that though it was not part of the work of the plaintiff he went and dislodged the last of the three wedges that caused the logs to roll off the lorry. I do not accept their version of how the accident came about. There are a number of unsatisfactory features in their evidence. Their evidence does not ring truth. On the other hand, the plaintiff has been with the defendant company for nineteen years, doing the work he was doing that day.

A It cannot be that he would do a foolish act as that alleged of him. I prefer the evidence of the plaintiff. He said: "The logs must have suddenly fallen off because where the lorry was parked was a public road. Many other vehicles travelled on it. The vibrations must have caused the logs to fall off. This sort of thing, of logs falling off, has happened quite often at this sawmill. It is only that on those occasions no one was injured."

B I find that the defendant company has a duty to provide a safe system of work, that there had been a breach of that duty and that resulted in the accident that day. I find the defendant company negligent.

C The next issue is: Has there been any contributory negligence on the part of the plaintiff? I invited counsel to address me on it. Having had the benefit of their submissions, I am satisfied that there was no negligence that can be attributed to the plaintiff. The damages are agreed between the parties. There will be judgment for the plaintiff for \$70,500 and costs.

D *Claim allowed.*

Solicitors: *Chiam & Co.; Joe Chellam.*

LAU CHOONG CHOO v. CHOU WE CHUAN

[O.C.J. (D'Cotta J.) November 19, 1979]

E [Singapore — Originating Summons No. 74 of 1973]

Family Law — Divorce — Matrimonial home — Wife's claim for equal shares in property — Common intention and conduct of parties — Women's Charter (Cap. 47), s. 55.

Women's Charter — Title to property — Common intention of the parties and surrounding circumstances must be considered by court — Women's Charter (Cap. 47), s. 55.

F The parties in this case, both teachers, were married in 1963. In August 1968 they bought their matrimonial home, No. 31 Moonbeam Walk, Singapore, for \$41,750. The respondent moved out of the house in March 1973 when the applicant instituted divorce proceedings which culminated in 1974 in her obtaining a decree nisi absolute on the grounds of cruelty.

G The present application was brought under section 55 of the Women's Charter (Cap. 47) for an equal share or share that the court may think just in the said property known as No. 31 Moonbeam Walk. The applicant said that she contributed a sum of \$13,000 towards the purchase of the said house and the balance of \$29,000 was obtained by the respondent by way of a mortgage loan. She claimed that from November 1968 to December 1972 she also contributed to the running of the matrimonial home apart from other gifts which she made to the respondent during the years 1967-1972.

H **Held:** (1) in dealing with the applicant's claim the court must consider the common intention of the parties at the time of the purchase of the matrimonial home as well as the conduct of the parties throughout in the light of the surrounding circumstances;

(2) the applicant made a substantial financial contribution towards the acquisition and the running of the matrimonial home which justified the conclusion that it was the common intention of both spouses that they should share the house even though the conveyance was taken in the name of the husband alone;

(3) the court would allow the applicant's claim for her half share as a rule of law and not as an inference of fact: The maxim "equality is equity" was applied.

Cases referred to:-

(1) *Gissing v. Gissing* [1971] A.C. 886.

(2) *Hazell v. Hazell* [1972] 1 All E.R. 923.

ORIGINATING SUMMONS.

Liu Yuen Ming for the applicant.*Tommy Neo* for the respondent.*Cur. Adv. Vult.*

D'Cotta J.: This is an application made by Madam Lau Choong Choo (hereinafter called "the applicant") by way of Originating Summons No. 74 of 1973 praying for an order that —

- (i) the property situated and known as No. 31 Moonbeam Walk, Singapore is owned by the applicant and respondent in equal shares or in other shares that the court may think just;
- (ii) further or alternatively the applicant is entitled to proceeds of sale of the above property in the share spelt out above; and
- (iii) the costs of and incidental to this application be paid by the respondent.

The facts of the case are as follows: —

The parties in these proceedings were lovers since their school days. They came to know each other in the year 1952 and in the year 1955 they got engaged. In the year 1960 they both commenced to work as teachers and in August 1963 they got married and stayed at 74 Jalan Buloh Perindu, Singapore which they shared with the respondent's mother, two sisters and a brother. The respondent's salary at this time was about \$400 p.m. and the applicant's salary about \$300 p.m.

In the year 1967, as the applicant could not agree with one of the respondent's sisters, the parties removed to 449-H Macpherson Road, Singapore to stay on their own and in August 1968 a matrimonial home was purchased known as No. 31 Moonbeam Walk, Singapore (hereinafter called "the matrimonial home") where the parties resided. The respondent moved out of the matrimonial home in March 1973 when the applicant instituted divorce proceedings which culminated in 1974 in her obtaining a decree nisi absolute on the grounds of cruelty which said divorce was not contested.

Following upon the divorce proceedings, the applicant instituted these proceedings under section 55 of the Women's Charter which is as follows: —

"55. — (1) In any question between husband and wife as to the title to or possession of property, either party may apply by summons or otherwise in a summary way to any judge of the Supreme Court and the judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over, and any inquiry touching the matters in question to be made in such manner as he thinks fit."

In August 1968 the parties purchased a matrimonial home for the sum of \$41,750. The applicant's claim is based on the ground that she contributed a sum of \$13,000 towards the purchase of the matrimonial home and the balance of \$29,000 was obtained by the respondent by way of a mortgage loan. She also claimed that from November 1968 till December 1972 she also contributed to the running of the matrimonial home apart from other gifts which she made to the respondent during the years 1967-1972. The respondent is disputing the applicant's claim.

A The question turns on whether a court is satisfied on the evidence that it can draw an inference of a trust from the conduct of the parties of the surrounding circumstances even though the parties themselves have made no precise agreement about their respective shares. In dealing with the applicant's claim, we must consider the common intention of the parties at the time of the purchase of the matrimonial home as well as the conduct of the parties throughout in the light of the surrounding circumstances.

B The applicant in her evidence was quite frank and related how she and the respondent started life together with their respective salaries of \$300 and \$400 and how they had no money to go for a honeymoon and she had to give the respondent \$1,000 for the wedding celebration; how the respondent had to borrow \$250 from his elder sister for the wedding feast which was repaid by the applicant's first month salary. They eventually decided to purchase the matrimonial home. They had no money but the respondent was prepared to raise the necessary money on a mortgage loan; the applicant said that she approached her mother who had advanced her a sum of \$13,000. In support of her evidence that she contributed the sum of \$13,000 the applicant called her mother — Madam Ting Geok Eng (PW2) to give evidence. According to Madam Ting, who is at present 70 years of age and of poor memory due to senility, ill-health and the fact that she had undergone 4 operations all of which factors combined would make it difficult for her to have remembered a transaction which took place about 10 years ago, the bulk of the \$13,000 came from her own savings and the rest was obtained from friends and relatives whose names she could not now give or remember. However, the evidence of the applicant is that she gave this sum of money to the respondent some time "in early October 1968" and this date is somewhat reflected in the respondent's statement of accounts, of which the applicant had no knowledge at the time she gave her evidence, for the period August 3, 1968 to December 23, 1968 — see AB20 and AB21 — shows that between October 7, 1968 and October 11, 1968 a sum of about \$9,000 was paid into the said accounts.

C The applicant went on to say that when the respondent was applying for a Government loan, he asked her what her salary was as the Government was desirous of knowing their respective salaries before approval for the loan was given. At about this time, she asked the respondent to put the house in their joint names to which he replied that since he was applying for the loan and paying the instalments which would be deducted from his salary, the property had to be put in his name. When she was cross-examined as to why she did not see her lawyer for advice about this matter, the applicant said that at the time she was very much in love with the respondent and the question of divorce was never thought of. The applicant also stated that at about this time i.e. October 1968, she borrowed a sum of \$3,000 from her elder sister — Madam Liew Tze Ting (PW4) for the purpose of renovating the matrimonial home and for purchasing furniture as well. Madam Liew gave evidence about this loan in a very straight-forward manner and I had no reason to doubt her; she was cross-examined about it

but her evidence was not shaken. I accepted her evidence.

As against this, the respondent denied that the applicant had made any such contribution and said that the money for the down payment came from his sister — Madam Chou Kuie Chin (DW2) — to whom the respondent had sold 74 Jalan Buloh Perindu at a price of \$30,000 in September 1967. According to Madam Chou, \$10,000 was paid to redeem the mortgage and the balance of \$20,000 according to her evidence was, and I quote: —

"In August 1968 I paid DW1 (the respondent) \$17,000 and the balance of about \$2,000 was paid in 1969."

Under cross-examination, Madam Chou said that this sum of money was obtained from her "tontine". The respondent however, under cross-examination, stated that the sum of \$19,000 was paid to him by his sister between "August 1968 and November 1968". Now, if Madam Chou and the respondent are to be believed, this large sum of money namely \$17,000 should be reflected in Madam Chou's bank account (which is not the case) nor was it shown, if there was such payment, in the respondent's statement — AB20 — for the month of August or September 1968 especially when there was only a small credit balance of \$14.81 as at September 20, 1968.

Again I would like to refer to the affidavit — AB88 — of the respondent sworn on March 27, 1973 when facts were still clear in his mind and in particular to paragraph 3 which reads as follows: —

"3. Prior to my purchase of the said property I sold my house No. 74 Jalan Buloh Perindu, Singapore for the sum of \$30,000 on the 27th day of September 1967. In my purchase of No. 74 Jalan Buloh Perindu in 1963 I took a loan from the Great Eastern Life Assurance Co. Ltd. which loan was secured by a legal mortgage of this particular property. Attached herewith and marked 'CWC 1' is a copy of the letter from Tan, Rajah & Cheah to me dated 5th day of December 1962 and who were my solicitors in the purchase of No. 74 Jalan Buloh Perindu, Singapore. From the sale price of \$30,000 I had to incur expenses, particulars of which are as follows:

1. Payment towards the housing loan	-	-	\$10,375.53
2. Legal costs	-	-	247.00
			\$10,622.53

Attached herewith and marked 'CWC 2' is a copy of the letter from E.K. Choo & Co. addressed to me dated 13th day of June 1967 and who were my solicitors in the sale of No. 74 Jalan Buloh Perindu, Singapore. The remaining sum of about \$19,000 was utilised by me to purchase furniture on various occasions while the applicant and myself were residing at No. 449-A Macpherson Road, Singapore, and at the said property which amounted to about \$5,000 and for the down-payment and legal costs in the purchase of No. 31 Moonbeam Walk, Singapore, amounting to about \$14,000. Attached herewith and marked 'CWC 3' is a copy of the bill from Yap and Yap to me who were my solicitors in the purchase of the said property."

It will be observed from the above affidavit sworn on March 27, 1973 that no mention whatever was made that the sum of \$19,000 was paid by his sister to him considering the fact that the respondent was fully aware by then that the applicant was claiming her share in the matrimonial home when she filed the originating summons on March 5, 1973 together with supporting affidavits sworn on March 3, 1973 stating that she contributed \$13,000 towards the purchase price of the matrimonial home. It would appear that the question of his sister paying him such a large sum of money was an after thought on his part, and in the

A case of his sister, the timing of such payment to him by her was a "co-incidence" on her part when she said and I quote:

"Q. This payment from the tontine money appeared to coincide with the time when DW1 needed the money.

A. Yes."

The respondent went on to say that from the 2nd month of their marriage which was in September 1963, he did not trust the applicant and from then onwards their money was their own. If he is to be believed, the applicant must have been most generous to have given from the undisputed evidence, the respondent the sum of \$2,800 in early 1967 for the purchase of a car and to have contributed \$3,000 in October 1968 for the renovation and purchase of furniture for the matrimonial home because if each kept their respective money for themselves and if that was the state of things it is most difficult to believe that the applicant would have given the respondent the sum of \$5,800 knowing full well that owing to the existing circumstances she would never have been able to recover that sum of money: as a matter of fact the respondent in evidence admitted that the applicant never at all asked for the return of the sum of \$2,800.

I find it very difficult to believe the respondent's version because at about this time i.e. in 1967 differences between the parties, if any, had not yet arisen as they had just moved into 449-H Macpherson Road to start a life on their own paying a high rental of \$280 p.m. It must be borne in mind that the parties had known each other for about 11 years before they got married, and for the respondent to come to court and say that from the second month of their marriage he had reason to distrust his wife in monetary matters and that he bought the matrimonial home without consulting her leads me to *prima facie* a strong almost compelling inference that he was not a witness of truth. At the time of the purchase of the matrimonial home the salary of the applicant was in the region of about \$650 p.m. and that of the respondent \$990 p.m. The applicant quite frankly admitted that as regards the monthly expenditure, the respondent paid for the mortgage loan, P.U.B. and telephone charges, petrol bills, road tax, insurance of the car, property tax, insurance of the house and life insurance, and from January 1969 he also paid by way of instalments about \$100-\$200 p.m. for the purchase of a new car. She, on the other hand, paid for all household expenses, salaries of two servants and she gave the respondent about \$50 a week and on festive occasions paid for whatever presents they gave. She expended a sum of about \$500 p.m. and this continued from November 1968 to December 1972.

I watched both the applicant and the respondent very closely and their demeanour when they gave their evidence. The applicant struck me as being of a simple type, straight-forward in her dealings, not sophisticated and all in all what one would term an "honest to goodness" type. There were discrepancies in her evidence which were not material and which is to be expected when one narrates events which occurred ten years ago.

The respondent, on the other hand, appeared deceitful, evasive and vindictive and quite obviously tried as far as possible to paint his picture with whatever colourings he thought might attract the court. For the

reasons which I have given I did not believe him and I rejected his evidence.

I was therefore satisfied that the applicant had given the respondent the sum of \$13,000 towards the purchase of the matrimonial home and I so find. I had also no reason to doubt the evidence of the applicant whatever on the statement she gave as to the monthly expenditure of the parties. It would have been virtually impossible for the respondent to have existed and to have met all those overhead charges unless he was assisted which I have no doubt he was and I was satisfied that the applicant contributed to the running of the matrimonial home when she said she expended about \$500 p.m. towards household expenses.

To sum up the evidence of both parties, I had no doubt in my mind that the applicant was telling the truth when she suggested to the respondent that the property be put in their joint names and I also believe the respondent when he said that the property had to be in his name since he was paying off the mortgage. However, the crucial point is whether the question of joint ownership was discussed and I am satisfied that it was but the applicant did not insist on the property being put in their joint names chiefly because she believed the respondent and furthermore as she said she was in love with him and never for a moment thought that a day would come when there would be a parting of ways.

On this question of purchase of a matrimonial home and it being in the name of one of the spouses Lord Diplock in *Gissing v. Gissing*,⁽¹⁾ at page 907 had this to say:—

"When a matrimonial home is not purchased outright but partly out of moneys advanced or mortgaged repayable by instalments and the land is conveyed into the name of the husband alone, the fact that the wife made a cash contribution to the deposit and legal charges not borrowed on mortgage gives rise, in the absence of evidence which makes some other explanation more probable, to the inference that their common intention was that she should share in the beneficial interest in the land conveyed."

and further at page 908 Lord Diplock went on to say:—

"Even where there has been no initial contribution by the wife to the cash deposit and legal charges but she makes a regular and substantial direct contribution to the mortgage instalments it may be reasonable to infer a common intention of the spouses from the outset that she should share in the beneficial interest or to infer a fresh agreement reached after the original conveyance that she should acquire a share."

Lord Reid in the same case at page 896 said:—

"It must often happen that in coming to and carrying out such an agreement or understanding neither spouse gives a thought to the legal position or the legal consequences; spouses generally expect that, on the decease of one of them, his property will go to the other, and I strongly suspect that in a great many cases they do not think about what the position of the wife would be if there were a divorce or the husband became bankrupt, or at least they do not discuss those possibilities."

Lord Reid at page 897 went on to say:—

"There is a wide gulf between inferring from the whole conduct of the parties that there probably was an agreement, and imputing to the parties an intention to agree to share even where the evidence gives no ground for such an inference. If the evidence shows that there was no agreement in fact then that excludes any inference that there was an agreement. But it does not exclude an imputation of a deemed intention if the law permits such an imputation."

Lord Pearson in the same case at page 902 expressed

the following view —

"I think it must often be artificial to search for an agreement made between husband and wife as to their respective ownership rights in property used by both of them while they are living together. In most cases they are unlikely to enter into negotiations or conclude contracts or even make agreements. The arrangements which they make are likely to be lacking in the precision and finality which an agreement would be expected to have. On the other hand, an intention can be imputed; it can be inferred from the evidence of their conduct and the surrounding circumstances."

As regards contributions made in the running of the matrimonial home, Denning M.R. expressed his views about this in *Hazell v. Hazell*⁽²⁾ at page 926 as follows:—

"It is sufficient if the contributions made by the wife are such as to relieve the husband from expenditure which he would otherwise have had to bear. By so doing, the wife helps him indirectly with the mortgage instalments because he has more money in his pocket with which to pay them. It may be that he does not strictly need her help — he may have enough money of his own without it — but, if he accepts it (and thus is enabled to save more of his own money) she becomes entitled to a share."

In my view the conduct of the parties in the beginning in the light of the surrounding circumstances points strongly to the fact that there was an implied understanding between the parties and a common intention at the time of the acquisition of the matrimonial home that the beneficial interest should be shared and it is a breach of faith on the part of the respondent in whom the legal estate is vested to fail to give effect to that intention.

To summarise the position, the legal basis for the decision in *Gissing v. Gissing* is that a matrimonial home in the name of one spouse alone is nevertheless held to belong to both by virtue of a trust which can be imputed to the parties from their conduct and the surrounding circumstances. Such an inference can be made where each has made a substantial financial contribution towards its purchase whether such contributions are made directly or indirectly as contributions towards the purchase monies or mortgage instalments due thereon.

On the facts I find that the applicant made a substantial financial contribution towards the acquisition and the running of the matrimonial home which justified the conclusion that it was the common intention of both spouses that they should share the house even though the conveyance was taken in the name of the husband alone.

On the question of the share to which each is entitled, we must once again resort to the conduct of the parties to ascertain whether any inference can reasonably be drawn as to the probable understanding about the amount of the share of the contributing spouses. In the present case under existing circumstances this is most difficult to ascertain. The applicant is claiming her half share and in the absence of express or implied words, I am driven to apply *as a rule of law and not as an inference of fact* the maxim "*equality is equity*" and to hold that the beneficial interest belongs to the spouses in equal shares — per Lord Diplock in *Gissing v. Gissing*, *supra*. There will be an order in terms of prayer (i) and (iii) of the originating summons.

Order accordingly.

Solicitors: Lim, Ganesh & Liu; Tan Kim Seng & Co.